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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

JAMES M. SCOTT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

James M. Scott
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550P

QUESTIONS PRESENTED

I. Whether an individual can file a federal tax return without waiving his Fifth Amendment protected rights.

II. Whether a statute in the Internal Revenue Code makes a person liable to pay the income tax.

III. Whether the result of the income tax is a capitation tax as known by the Founding Father.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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The opinion of the court of appeals issued in support of its judgment is reported as *United States v. James Scott*, 1999 U.S. App. LEXIS 16877, 99-2 U.S. Tax Cas. (CCH) ¶ 50,745 (June 23, 1999), and is reprinted in Appendix A.

The opinion of the court of appeals denying the petition for rehearing and petition for rehearing en banc is reported as *United States v. James Scott*, 1999 U.S. App. LEXIS 24620 (October 4, 1999), and is reprinted in Appendix B.

The opinion of the district court is unreported as *United States v. James Scott*, Cause No. 2:95 CV 401 (N.D.Indiana, September 21, 1998), and is reprinted in Appendix C.

The final order and judgment of the district court is reported as *United States v. James Scott*, 1998 U.S. Dist. LEXIS 17505 (October 8, 1998), and is reprinted in Appendix D.

JURISDICTION

The court of appeals in this case denied the petition for rehearing and petition for rehearing en banc on October 4, 1999. This petition is therefore timely under Supreme Court Rules 13.1, 13.3, 29.2, & 30.1 if mailed U.S.P.S. first class, postmarked by January 2, 2000.

This Court has jurisdiction to review the judgment of the court of appeals pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves application of the following constitutional and statutory provisions.

No person shall . . . be compelled in any criminal case to be a witness against himself.

U.S. Constitution, Amendment V

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.

U.S. Constitution, Article I, Section 9, Clause 4

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

26 U.S.C. § 6001.

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

26 U.S.C. § 6011.

Returns with respect to income taxes under subtitle A shall be made by the following ... (1)(A) Every individual having for the taxable year gross income which equals or exceeds the

exemption amount... .
26 U.S.C. § 6012.

STATEMENT OF THE CASE

On August 25, 1995, Appellant filed a "Notice and Demand of Lien" in the amount of $1,000,000 against IRS Agent Patricia Schreiner ("Schreiner") with the Recorder of Deeds of Tippecanoe County, Indiana. Schreiner was collecting an alleged tax debt against Appellant that he contends is not due and owing. Appellant asserted that the lien filed against Schreiner clouded his property and damaged his credit history.

On December 19, 1995, United States filed an action with the United States District Court for the District of Indiana, Hammond Division, pursuant to the provisions of 26 U.S.C. Section 7402, against Appellant, seeking release of the common-law lien he filed against Agent Schreiner. United States further sought an injunction prohibiting Appellant from filing future common-law liens. An amended complaint was filed by United States on February 1, 1996.

Appellant filed his answer to the amended complaint on February 21, 1996. Appellant further requested trial by jury.

On July 16, 1996, United States filed a motion for summary judgment with a brief in support thereof. United States argued that Schreiner was not personally indebted to Appellant, and that he stated the lien was filed due to Schreiner's collection efforts against him.

The District Court issued an order granting United States motion for summary judgment on September 21, 1998. On

October 22, 1998, the District Court's Judgment was entered.

On July 19, 1999, the Court of Appeals affirmed the District Court holding that "[s]ummary judgment was properly entered against [Petitioner] because he does not dispute that Schreiner never incurred a debt to him."

Petitioner has contended that: (1) the so-called income tax does not apply to an American's compensation earned by his labor, (2) an income tax return cannot be filed without waiving Fifth Amendment rights, and (3) no statute in the Internal Revenue Code makes an individual liable for the payment of the income tax. Petitioner filed liens against an IRS official, since they were imposed in violation of his rights.

On September 1, 1999, Petitioner filed a petition for rehearing and petition for rehearing en banc. The petition was denied on October 4, 1999.

This timely petition follows.

REASON FOR GRANTING THE WRIT

I. THE FIFTH AMENDMENT PROHIBITS THE FEDERAL GOVERNMENT FROM REQUIRING THAT AN INCOME TAX RETURN BE FILED WITHOUT A STATUTORY GRANT OF IMMUNITY

The Fifth Amendment of the United States Constitution Provides in relevant part:

> No person ... ***shall be compelled*** in any criminal case ***to be a witness against himself***.... [Emphasis added].

The Supreme Court in *Garner vs. U.S.*, 424 U.S. 648 (1975), held that the ***information in a return is*** - for Fifth Amendment analysis, the testimony of a witness. Therefore, since no citizen can be compelled to be a "witness" against himself, any statute that attempted to require a citizen to file a return which could be so used would be unconstitutional.

The Supreme Court in *U.S. vs. Doe*, 104 S.Ct. 1237 (1984), took the position that if an individual so much as even admits to having books and records, he waives the Fifth Amendment protections of his rights because the Fifth Amendment does not apply to documents, it only applies to testimony. Such waiver would occur when any American files Form 1040 and all schedules submitted therewith.

When police question an individual for information that may be used against that individual in a criminal case, they are supposed to first read him a "**Miranda**"[1] warning to advise him

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1. The *Miranda* Supreme Court held as follows: "We have recently noted that the privilege against self-incrimination – the essential mainstay of our adversary system – is founded on a complex of values... . To maintain a fair state-individual balance, to require the government to shoulder the entire load ... to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth... . In sum, the privilege is fulfilled only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will. ... [T]here can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all

(continued...)

of many of his rights (*Miranda vs. Arizona*, 384 U.S. 436 (1966). After such warning, every time that individual does answer a question, he is voluntarily waiving the Fifth Amendment protection of his rights. He cannot later object when the answers he volunteered are used in his criminal prosecution.

Although *Miranda* does not apply in most civil processes, Congress has required all government agencies to inform the public of the law, and the penalties for not obeying the law, pursuant to the 1974 Privacy Act, 5 U.S.C. Section 552a(e)(3). The following statement is the IRS' Privacy Act Notice as it appears in the 1040 Instruction Booklet.

> The law says that when we ask you for information we must tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive the information and whether your response is voluntary, needed for a benefit, or mandatory under the law.
>
> This notice ***applies to all papers you file with us, including this tax return. It also applies to <u>any questions</u> we need to ask*** you so we can complete, correct, or process your return; figure your tax; and collect the tax, interest, or penalties. Internal Revenue Code Sections 6001, 6011, and 6012(a) say that you must file a return for any tax for which you are liable. Your response is mandatory under these sections. Code section 6109 says that you must show

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1. (...continued)
settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves."

your social security number on what you file, so we know who you are and can process your return and other papers. You must fill in all parts of the tax form that apply to you. However, you do not have to check the boxes for the Presidential Election Campaign.

We may ***give the information to the Department of Justice and to other Federal agencies***, as provided by law. We may also ***give it to cities, states, the District of Columbia, U. S. Commonwealths or possessions, and certain foreign governments*** to carry out their tax laws.

If you do not file a return, do not give the information asked for, or give false information, you may be charged penalties and you may be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office. [Emphasis added].

This IRS' notice is effectively a veiled Miranda warning! Most people in the United States of America have heard of the 1040 Income Tax Form and the rest of the forms in the 1040 family. Each year, approximately 100 million people rush to the post office to give the government complete information on their financial lives. Amazingly, thousands, perhaps even millions of these individuals file their returns without any real

understanding of the form or the information placed on it. Their lack of understanding is why they use CPAs and computer programs to prepare the documents for them. But the majority, if not all, do not think that when they sign the forms they don't understand, oftentimes prepared entirely by others, and swear to their accuracy - "...under the pains and penalties of perjury!" - they could be prosecuted and their returns used against them.

In other words, millions of individuals blindly and without comprehension of the consequences commit the federal crime of perjury each year because they file income tax returns that they do not understand and that they thus could not explain or defend. 18 U.S.C. Section 1621 makes perjury a felony punishable by a fine of up to $2,000 and a jail term of up to five years, or both.

The IRS is very aware of the fact that they have a legal right to use any information given to them on a 1040 Form, and as expressly stated in the Notice answers ***"to <u>any</u> <u>questions</u> we need to ask*** you so we can complete, correct, or process your return." They are also aware that the Privacy Act requires all government agencies to inform the public about the law and to tell the public what they might do with the information requested, as well as advise them of the consequences for disobeying the law. That is why the IRS ***warns us that information on tax returns may be given to the Department of Justice for criminal prosecution***.

The IRS goes to great lengths in their Privacy Act Notice to create a confusing situation. After all, they want Americans to think that they are required to file a return and at the same time warn them that they are giving the IRS information that they can use in a criminal case. Whose case? The individual who

voluntarily submitted the return! If the information on a return, papers, and answers to questions concerning same were not voluntarily provided, then the IRS could not use it against them in a criminal proceeding.

The IRS is sneakily requiring individuals to "volunteer" information that can be used in any criminal case at any time. Petitioner does not use the term "sneakily" because the IRS doesn't inform Americans of such intentions? Instead, Petitioner says sneakily because they only make a quick statement to that effect in the Privacy Act Notice section of the 1040 Instruction Manual--and nobody takes the time to read that anyway. Petitioner wouldn't accuse them of sneakiness if they put a big, bold WARNING above that statement, but they don't emphasize that they may use the information to criminally prosecute at a later date. They just benignly state that they "...may give the information to other agencies (including) the Department of Justice..." How many Americans have ever read that sentence, and if they have, have they pondered its significance? Do Americans know that the Department of Justice's primary mission is to investigate and prosecute crime? The primary thing that the Department of Justice will do with the information is use it against the person providing same to convict them of a crime. This could lead to a fine, criminal prosecution and incarceration, or both. The IRS' Notice doesn't point that out anywhere ... does it?

It should be obvious to anyone that Americans cannot legally have a law that requires individuals to give the government information that can be analyzed and used in criminal cases for violation of the very law that requires the returns to be filed. It should also be obvious that something is rotten here. Yet, the IRS is requiring individuals to waive their

rights at the same time that it emphatically states in all of its publications that we have a "voluntary" tax system.

A tax return is simply a summary of the information that would be required on a financial affidavit. Yet, in *United States v. Gravatt*, 868 F.2d 585 (3rd Cir. 1989), the Third Circuit Court of Appeals held that a criminal conviction for tax evasion had to be reversed, since the trial court judge refused a court appointed attorney for Gravatt unless he completed and signed under penalty of perjury a financial affidavit. Based on Gravatt's 5th Amendment claim, the Eleventh Circuit held:

> However, when, as here, a defendant asserts a colorable claim that disclosure to the government of a completed CJA 23 would be self-incriminating, the court may not adopt an unconditional requirement that the defendant complete the CJA 23 before his application for appointment of counsel will be considered. To do so may place the defendant in the ***constitutionally untenable position*** of having to choose between his Sixth Amendment right to counsel and his Fifth Amendment privilege against self-incrimination.

Gravatt, 868 F.2d at 589. [Emphasis added].

All Americans who file a tax return waive their Fifth Amendment right. See *Garner*, supra; *Doe*, supra. The IRS cannot constitutionally require people to waive any of their rights or the constitutional protections of those rights. Therefore, the IRS cannot constitutionally require people to file tax returns.

During a criminal trial, the IRS introduces at trial the

defendant's previously filed tax returns in an attempt to prove the element of "willfulness" when the person has been charged with willful failure to file. See 26 U.S.C. Section 7203. This simple example by itself proves that filing a return can be used in a criminal case by the government to prove an element of a criminal offense. Since the act of filing a return is used to prove an element of an offense, under the 5th Amendment cases cited herein, either an American is not required to file a return and not required to waive his/her 5th Amendment right, or they are required to file returns and waive their right, but the later would be unconstitutional to the extent it requires such a waiver.

As noted above, the IRS' Privacy Act Notice states that: "This notice ***applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask*** you so we can ***complete***, ***correct***, or ***process*** your return; ***figure*** your tax; and ***collect the tax, interest, or penalties.***

According to the IRS itself in its Notice, this agency can ask ***any questions*** concerning a tax return including any questions concerning the collection of the tax, interest, or penalties. Stated another way, in order to collect the tax, interest, or penalties associated with a return, the IRS can compel absolute financial disclosure. It also applies not only to a tax return, but **ALL** papers filed with the IRS. The Notice informs Americans that such disclosure of their financial information is mandatory, and this information, as well as the return, can be given to the Department of Justice, etc. No reasonable mind can dispute the fact that such mandated disclosures directly violate the 5th Amendment, unless there is a wavier of such claim by voluntary answers to the questions, a voluntary waiver by the submission of the return, or a voluntary waiver by the submission of other

papers. The federal courts have uniformly ruled against such compelled testimony, unless the voluntary filing of a tax return or papers operates as a waiver of all 5th Amendment rights as to any questions whatsoever even remotely associated with said return.

Accordingly, the filing of papers, including a tax return, and all questions associated with these documents must be voluntary or it violates the 5th Amendment of the United States Constitution.

II. THE INTERNAL REVENUE CODE DOES NOT CONTAIN A STATUTE WHICH MAKES AN INDIVIDUAL LIABLE TO PAY THE INCOME TAX

As noted above, the mandates of the 1974 Privacy Act require federal agencies to give notice to the public of the statutes which require the filing of information with the agencies. For many years, the IRS published a Privacy Act Notice in the Form 1040 instruction booklets, as well as other notices, that the sections requiring the filing of income tax returns were only 26 U.S.C. Sections 6001 and 6011. These sections apply solely to persons liable for a tax. *United States v. Wilbur*, 696 F.2d 79, 80 (8th Cir. 1982). This notice never mentioned until many years later Section 6012. Sections 6001 and 6011 provide in relevant part:

> Every person ***liable for any tax*** imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

26 U.S.C. Section 6001.

> When required by regulations prescribed by the Secretary ***any person made liable for any tax*** imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary.

26 U.S.C. Section 6011.

As discussed in more detail below these IR Code sections only apply to a person ***made liable*** for any tax, but there is no such statute. Section 6012 was subsequently included in the IRS' Notice. Section 6012 provides that "[r]eturns with respect to income taxes under subtitle A shall be made by the following ... (1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount... ."

The IRS relies on Section 6012 of the Internal Revenue Code as one of the statutes that allegedly requires the filing of tax returns. However, the IRS Privacy Act Notice states it a little differently; that the law requires you to file a return ***for any tax you are made liable***. Since there is no statute that makes you liable, and since the IRS Privacy Act Notice is supposed to tell you the requirements of the law; then Section 6012 can't apply ***until you are made liable***.

Assuming arguendo that Section 6012 of the Internal Revenue Code does require individuals to file, even though they are not first made liable, the 5th Amendment renders the statute unconstitutional. In other words, the problem with Section 6012 is that the word "shall" is used in the statute. According

to Black's Law Dictionary,[2] the word "shall" is mandatory except when a mandatory interpretation would create a rights or constitutional violation. Since an interpretation of "mandatory" in this case would require individuals to waive the Fifth Amendment protection of their rights, Section 6012 would be unconstitutional if it really required individuals to waive such protections. Therefore, the word "shall" in Section 6012 must be interpreted to be permissive.

As you can see, Section 6012 has been deliberately left murky by Congress so that Congress cannot be accused of requiring individuals to waive the constitutional protections of their rights. Thus, the IRS' success in misleading the public

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2. "Shall - As used in statutes, contracts or the like, this word is generally imperative or mandatory... In common ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. ...But it may be construed as ***merely permissive*** or directory (as equivalent to "may,") to carry out the legislative intention and in cases where no right or benefit to anyone depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense... Also, ***as against the government, it is to be construed as "may,"*** unless a contrary intent is manifest. *Black's Law Dictionary, Revised 4th ed.*, pp 1541-1542.

regarding the income tax involves the use of the word "shall" in place of the word "required." Without the requisite legal knowledge the public naturally believes that the word "shall" in a statute operates as a command.

The US Supreme Court has explained how this works in *Railroad Company v. Hecht*, 95 U.S. 168, 170 (1877): "As against the government, the word "shall," when used in statutes, is to be construed as "may," unless a contrary intention is manifest." See also *Fort Howard Paper Co. v. Fox River Heights Sanitary Dist.*, 26 NW 2D 661 () ("The word 'shall' in a statute may be construed to mean 'may' particularly in order to avoid a constitutional doubt); *Gow v. Consolidated Coppermine Corp.*, 165 A 136 () ("If necessary, to avoid unconstitutionality of a statute, 'shall' will be deemed equivalent to 'may'.").

Even the federal courts seem bewildered when they attempt to ascertain which statute controls the ***purported*** duty to file income tax returns. In *Commissioner v. Lane-Wells Co.*, 321 U.S. 219, 222 (1944), the court noted that Section 54 of the 1939 IR Code, the predecessor for Section 6001, related to the filing requirement. In *True v. United States*, 354 F.2d 323, 324 (Ct.Cl. 1965), *Counts v. Commissioner*, 774 F.2d 426, 427 (11th Cir. 1985), and others, these courts held that Section 6011 related to the filing requirement. In *United States v. Dawes*, 951 F.2d 1189, 1192 n. 3 (10th Cir. 1991), *United States v. Hicks*, 947 F.2d 1356, 1360 (9th Cir. 1991), and others, these courts held that Sections 6011 and 6012 govern this duty.

In contrast, *Steinbrecher v. Commissioner*, 712 F.2d 195, 198 (5th Cir. 1983), *United States v. Bowers*, 920 F.2d 220, 222 (4th Cir. 1990), and others, held that only Section 6012 govern

the filing requirement. In *United States v. Pilcher*, 672 F.2d 875, 877 (11th Cir. 1982), however, the Eleventh Circuit mentioned none of the sections above, and the court held that Section 7203 required returns to be filed.

It is evident that even the federal courts are confused as to which IR Code section governs the requirement to file income tax returns. If the federal courts don't know, how can an American be required to know? If the federal courts cannot uniformly determine which section of the IR Code requires the filing of an income tax return, then it should be obvious that a serious due process problem exists within the federal income tax laws.

Even from the inception of the IR Code, the meaning of its provisions were not even understood by the drafters of its statutes. In 1913 during the debate on the first income tax act, Senator Elihu Root commented about the complexity of that first law:

> I guess you will have to go to jail. If that is the result of not understanding the Income Tax Law I shall meet you there. We shall have a merry, merry time, for all of our friends will be there. It will be an intellectual center, for no one understands the Income Tax Law except persons who have ***not*** sufficient intelligence to understand the questions that arise under it.

The United States Tax Court: An Historical Analysis, p. 12, by Harold Dubroff.

In any event, a reading of Section 6012 seems to say that every individual with "gross" income in excess of a certain

amount "shall" make a return. Herein lies the real constitutional stickler. If "shall" is mandatory, the IRC ... is a frontal assault upon the Bill of Rights. To avoid this constitutional inconsistency, "shall" is properly used to mean "may"... . Section 6012(a) says that every individual shall make a return. If "shall" means "must", then Congress by passing 6012(a), has superseded the Constitution of the United States. If shall is obligatory in this case, then people are required to file returns that may be later used against them in court as evidence to convict them of crimes. This cannot be the case and it is not the case. In order for Congress to get around this nasty item attached as the fifth article of the amendment to the Constitution, they give the job to their faithful agent, the IRS. The IRS then either tricks people into entering contracts of obligations, such as 1040 returns, or forces the people to pay through raw power even though the IRS lacks the lawful authority to make them. The deception occurs when the IRS then provides "alleged taxpayers" with a Privacy Notice that is a veiled Miranda warning. The tax filer is supposed to interpret this notice to say, "Anything you tell us could land you in jail, so make certain that what you tell us is true." However, it requires a most strained reading of the notice to glean this from it.

As previously noted, the Privacy Act Notice states that individuals are required to file a return, but only "...for ***any tax for which you are liable***." The Notice then refers to IRS Code Sections 6001, 6011 and 6012. These sections don't make anyone liable, they simply state that if you are liable, then you must file. Section 6012 has been discussed above. As to Section 6001 and 6011 it is important to make the observation that in several statutes of the Internal Revenue Code Congress is quite specific in identifying those made liable for a tax and

that a return is required. For example, in Subtitle E pertaining to alcohol, tobacco and other excise taxes are Sections 5005, 5061, and 5703. In Subtitle D, pertaining to miscellaneous excise taxes, we also have Section 4374.

There simply is no section in Subtitle A pertaining to income taxes stating that one is liable for the income tax, that one is required to make a return, or that one must pay the income tax; nor are there any cross-references to any of the provisions in Subtitle F where Section 6001 or 6011 are found. The only exception to this is found in Section 1461 which pertains to the withholding of taxes on nonresident aliens. The legal doctrine[3] applicable to Congress is that the express mention of one thing means the implied exclusion of another. In other words, Congress could have, but specifically chose not to create an automatic, statutory liability for Subtitle A income taxes.

As clearly demonstrated above, all of the information on a tax return and answers to questions related thereto can be turned over to the Department of Justice, numerous other federal and state agencies, and foreign governments. All of these government agencies are free to use the information against the taxpayer in any way they choose, including criminal prosecution. Any "law" that compels individuals to turn over such information to the government is repugnant to the 5th Amendment and unconstitutional on this single ground. This

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3. This legal doctrine is "***expressio unius est exclusio alterius***" which is defined as: "A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law ... an intention to exclude all others from its operation may be inferred." *Black's Law Dictionary*, 6th Ed., p. 581.

is why the Internal Revenue Code does not contain any provision that requires the filing of income tax returns. Anyone who files a tax return does so (whether they know it or not) voluntarily, which is the only reason they can be used against them.

The IRS in it's official documents and publications repeatedly state the voluntary nature of the income tax. There is simply no reason to use the term voluntary in these documents if the tax is mandatory.

In short, the IRS would not be required to give the warning that information may be given to the Department of Justice in its Notice unless it was allowed to use information on tax returns in criminal cases. So when Americans read the Privacy Act Notice they should know beyond a doubt that filing returns is indeed "voluntary" because the IRS is warning them that they can give the information to the Department of Justice. To repeat one more time: when Americans send in a tax return, they have been forewarned how the information may be used. Since, in spite of that warning, the information was voluntarily given on the return to the IRS, they cannot later object if they decide to use it against them in a criminal prosecution.

III. AN INCOME TAX AGAINST THE COMPENSATION OF INDIVIDUALS IS A CAPITATION TAX AS KNOWN BY THE FOUNDING FATHERS

The issue concerning the nature of the income tax on the compensation of Americans has never been addressed by the Supreme Court. A tax against an American measured by his/her compensation for labor is a Capitation Tax within the meaning of the Constitution and the intent of our Founding

Fathers. The present day tax on compensation is really a tax on the person measured by his compensation. This is in the nature of a capitation tax, and no strained interpretation of the 16th Amendment would relieve said tax from apportionment. Even the drafters included in Part I of the Internal Revenue Code the header which expressly states "Tax On Individuals."

In *Flint v. Stone Tracy*, 220 U.S. 107 (1911), the Supreme Court stated that "[a]ny tax when placed on the right of the man ... to live is a capitation tax and as direct as any tax can be."

In *Pacific Insurance Company v. Soule*, 74 U.S. 433 (1868), the Supreme Court quotes Mr. Justice Bouvier, in his learned Law Dictionary, "defines a capitation tax, 'A poll tax; an imposition which is yearly laid on each person according to his estate and ***ability***.'"

It doesn't matter what label is placed on a tax. Rather, it is the result of the taxation that determines its classification in the constitutional sense. For example, recently Congress imposed an ad valorem tax of 0.125 percent of the value of the commercial cargo involved in "any port use" of federally maintained navigable waterways. An exporter brought an action challenging the application of the Harbor Maintenance Tax ("HMT") to exports as a violation of the constitutional prohibition of a tax on exports. The lower court found that the HMT violated the Export Clause, U.S. Const., Art. 1, Section 9, Clause 5, because the result of the tax was a tax on exports rather than a user fee. *United States Shoe Corp. v. United States*, 907 F.Supp. 408 (CIT 1995), *affirmed on appeal, United States Shoe Corporation v. United States*, 114 F.3d 1564 (Fed.Cir. 1997). In other words, the courts found that the Act attempted to do indirectly what the Constitution prohibited

directly ... taxation of exports.

A tax on an American's compensation for his/her labor is a direct tax "yearly laid on each person according to his ... ability". It is also a tax, as held by the U.S. Supreme Court, "placed on the right of the man ... to live... ." The so-called income tax on a person's labor is in reality a tax on the person measured by his compensation known by our Founding Fathers as a capitation tax not relieved from the Constitution's apportionment requirement.

Article I, Section 9, Clause 4 of the United States Constitution provides: "No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

The relevant literature of the pre-constitutional period shows that the then American citizens were quite familiar with the relevant English laws. They borrowed the terms "direct tax" and "direct taxes" from the language of the books of the period, and then applied them to such taxes as they were then paying in the respective states, both for the support of such States and for the support of the general government under the Articles of Confederation. The Constitutions of the several states adopted prior to 1787 indicate that there had been taxes similar to an "income tax" passed by those states, as colonies, for the purpose of assessing and collecting taxes on an individual's compensation. Our Founding Fathers provided that such laws should be carried forward under their new constitutions.

The following excerpts from the literature clearly disclose that a tax on compensation for labor was known as a "faculty

tax," which our Founding Fathers also referred to as a capitation tax.

The first general tax law in the American colonies, with the exception of the early poll-tax in Virginia, was the law of 1634 in Massachusetts Bay. *Colonial Records of Massachusetts Bay* (Shurtleff's ed., 1853), I, 120. This provided for the assessment of each man "according to his estate and with consideration of all other his abilityes whatsoever."

It was not until several years later that "ability" was defined to include something more than mere property. This, however, occurred not in Massachusetts Bay, but in the colony of New Plymouth. In 1643 assessors were appointed to rate all the inhabitants of that colony "according to their estates or faculties, that is, according to goods, lands, improoued faculties and psonall abillities." *Records of the Colony of New Plymouth*: Laws 1623-1682 (Pulsifer's ed.), XI, 42. The court order of 1646 provided not only for assessment of personal and real estates, but distinctly mentioned "laborers, artificers and handicraftsmen" as subject to taxation, and then went on and said:

> And for all such persons as by advantage of their arts and trades are more enabled to help bear the public charges than the common laborers and workmen, as butchers, bakers, brewers, victuallers, smiths, carpenters, taylors, shoemakers, joyners, barbers, millers and masons, with all other manual persons and artists, such are to be rated for returns and gains, proportionable unto other men for the produce of their estates." *Colonial Records of Massachusetts Bay*, (Pulsifer's ed.), II, 173.

This is the first time that the definition of faculty or ability

was provided. Just as the faculty of the property owner is seen in the produce of his estate, so that of "artists" and "tradesmen" is to be found in their "returns and gains."

This principle of taxation laid down in the records of Massachusetts Bay was soon adopted by other colonies. The colony of New Haven, for instance, at first levied a land tax. But as early as 1640 personal property was assessed, by the provision that a new rate should be "estreeted, halfe upon estates, halfe upon lands." *Records of the Colony and Plantation of New Haven*, (Pulsifer's ed.), I, 40. In 1645 it was seen that even this was not adequate, and a proposal was made to tax others besides property owners; but no decision was reached at that time. *Id.* As the dissatisfaction grew, a committee was established in 1648 to inquire into the feasibility of the Massachusetts system of taxing all property in general. And also of levying a tax on the profits of those who possessed no property. *Id.*, I, 448. The committee reported that they were in doubt as to the advisability of taxing houses and personal property, but that "for tradesmen they thinke something should be done that may be equall in waye of rateing them for their trades." *Id.*, I, 494. ***As a result the law of 1649 was enacted, which introduced the taxation of profits of laborers, tradespeople and others.***

In Connecticut the early laws were patterned on the Massachusetts Bay legislation. It was provided in 1650 that "every inhabitant who doth not voluntarily contribute proportionably to his ability to all common charges shall be compelled thereunto by assessments and distress"; and it was further provided that the lands and estate should be rated "where the lands & estates shall lye," but "theire persons where they dwell." *Colonial Records of Connecticut*, (Pulsifer's ed.),

I, 548.

In Plymouth Colony the practice inaugurated by the law of 1643 continued, although only two more instances where it is expressly mentioned, namely, in 1665, when "visible estates and faculties" were mentioned (*Records of the Colony of New Plymouth* (Pulsifer's ed.), XI, 211), and in 1689, when a court order fixed the valuation for different kinds of visible estate, but left the valuation of "faculties and personall abillities" to be determined "at will and doome." Id., VI, 221.

In Rhode Island the faculty tax was introduced a little later. In 1673 the assembly laid down the rule that taxes ought to be assessed according to "equety in estate and strength," i.e., not only according to the property, but also in proportion to what was elsewhere called the "faculty," or "profits and gains." *Colonial Records of Rhode Island*, (Pulsifer's ed.), II, 510.

Outside of New England this early taxation of profits and gains along with the general property tax was found also in New Jersey, where it was provided by the law of 1684 that not only property owners, but also:

> [A]ll other persons within this province who are free men and are artificers or follow any trade or merchandizing, and also all innholders, ordinary keepers and other persons in place of profit within this province, shall be lyable to be assessed for the same according to the discretion of the assessors."

Laws of New Jersey, 1664-1701 (leaming and Spicer), 494.

The faculty tax imposed during the Seventeenth Century are

examples of early taxation by the Colonies. Later on, it will be seen that the tax appeared in some of the Southern states. In New York it never secured a foothold. During the Dutch domination, the tax system of this latter Colony was composed almost entirely of excises and duties; when the English obtained control, the general property tax was introduced, but without any additional "faculty" tax as in the New England Colonies.

How did our Founding Fathers know these taxes? These "faculty" taxes were also known as "***capitation***" taxes. As noted above, faculty or capitation taxes were expressly made "direct taxes" in the Constitution by our Founding Fathers. Even assuming that the 16th Amendment was properly ratified, it did not relieve capitation taxes from the apportionment requirement.

During the Eighteenth Century the custom of assessing profits or gains continued and extended to other colonies. In Massachusetts more earnest and repeated efforts to explain and enforce the law were made than anywhere else.

Upon the union of the Plymouth and Massachusetts Bay Colonies into the Province of Massachusetts, under the charter of 1692, a law was immediately enacted providing that all estates whatsoever, real and personal, should be taxed at "a quarter part of one year's value or income thereof." *Acts and Resolves of the Province of Massachusetts Bay*, 1692 to 1780 (5 vols.), I, 29, 92. In 1706, assessors were admonished to rate:

> [I[ncome by any trade or faculty, which any person or persons (except as before excepted) do or shall exercise in gaining by money, or other estate not particularly otherwise assest, or commissions of profit in their

> improvement, according to their understanding and cunning, at one penny on the pound, and to abate or multiply the same, if need be, so as to make up the sum hereby set and ordered for such town or district to pay.

Id., I, 592.

The law of 1738 added the words "business or employment," commanding the assessment of:

> [T]he income or profit which any person or persons ... do or shall receive from any trade, faculty, business or employment whatsoever, and all profits which may or shall arise by money or other estate not particularly otherwise assessed, or commissions of profit in their improvement."

Acts and Resolves of the Province of Massachusetts Bay, 1692 to 1780 (5 vols.), II, 934.

Except as to the rates, this form of law continued unchanged until 1777. The law enacted in that year gave a fuller interpretation of income than any previously. Taxpayers were assessed:

> [O]n the amount of their income from any profession, faculty, handicraft, trade or employment; and also on the amount of all incomes and profits gained by trading by sea and on shore, and by means of advantages arising from the war and the necessities of the community."

Acts and Resolves of the Province of Massachusetts Bay, 1692 to 1780 (5 vols.), V, 756.

In Connecticut the early laws followed almost word for word the Massachusetts legislation. Later acts provided that:

> [A]ll such persons who by their acts and trades are advantaged shall be rated in the list ... proportionable to their gains and returns, - butchers, bakers ... and all other artists and tradesmen and shopkeepers."

... *and Laws of Connecticut* (New London, 1715), 100.

In New Hampshire, the first detailed assessment law passed in the province in 1719 instructed the selectmen to assess the residents "in just and equal proportion, each particular person according to his known ability and estate." Later on in 1739 "an act for the more easy and speedy assessing" of taxes was passed, which authorized the selectment to assess "the polls and estates of inhabitants, each one according to his known ability." *Acts and Laws of his Majesty's Province of New Hampshire* (1761), 30, 180.

Vermont, when it separated from New York, followed the example of Connecticut in taxation as in much other legislation. The first law on the subject, that of 1778, was very explicit in its provisions, and repeated the Connecticut law in some places word for word. Wood, *History of Taxation in Vermont*, 32 and 36.

When speaking of these laws at page 39, Wood said: "It will be observed that the income idea was thus enlarged to suit the growing and diversifying business of the community." Wood also referred to a law passed in 1825, of which he said at page 46: "The change in practice as to incomes consisted in the revival of minimum assessments."

In Pennsylvania in 1782 a law was enacted which imposed a poll tax on all freemen. But the law went on to include taxes on profits arising from "all offices and posts of profit, trades, occupations and professions... ." *Laws of the Commonwealth of Pennsylvania* (Dallas), II, 8.

When Maryland adopted the State Constitution in 1777, provisions were made for an assessment of one-quarter of one per cent on the "amount received yearly" by "every person having any public office of profit, or an annuity or stipend," and on the "clear yearly profit" of "every person practising law or physic, every hired clerk acting without commission, every factor, agent or manager trading or using commerce in this state." *Maryland, Laws of 1777*, ch. 22, secs. 5, 6.

In South Carolina in 1703 a law provided that individuals should be assessed on their "estates, goods, merchandizes, stocks, abilities, offices and places of profits of whatever kind or nature soever." The law of 1777, which was the first under the state Constitution, phrased it a little differently by providing for a tax on "the profits of all faculties and professions, the clergy excepted, factorage, employments, handicrafts and trades throughout this state." Cooper, *Statutes at Large of South Carolina*, II, 36, 183; IV, 366.

By tracing the tax laws of Massachusetts from inception to the law of 1777, which was virtually continued by the new Constitution of 1780, we can see the gradual process by which the term "faculty tax" was displaced both in popular usage and in legal parlance by the term "income tax." As previously noted, a "capitation tax" was expressly made a "direct tax" in the Constitution. A tax on a person's compensation from

his/her business or profession differs only in respect to the assessment. In other words, the "faculty tax" is assessed upon the supposed income, and the other upon the actual income. Smith's *Wealth of Nations*, Vol. 3, pp. 276-278. Regardless of the method of assessment, a tax on an individual's compensation from his business or profession is a capitation tax prohibited by the Constitution except by apportionment.

No change was made in the wording of the Massachusetts provisions until 1821, when an act was passed which included among the sums to be returned to the assessor: "[T]he amount of the income of such inhabitants from any profession, handicraft, trade or employment, or gained by trading at sea or on land, and also all other property of the several kinds returned in the last valuation, or liable to taxation by any law. *General Laws of Massachusetts*, 1831, (3 vols.), Vol. Ii, laws of 1821, Chap. 107, sec. 2.

The Report of Oliver Wolcott, Jr., Secretary of the Treasury, to the House of Representatives on Direct Taxes, December 13, 1796, discusses the faculty-income tax and states:

> Taxes have been hitherto collected on the ***estimated annual income*** of the inhabitants of the State, without reference to specific objects. It appears to have been a rule established by the assessors, and confirmed by long usage, to assess all persons at one-fifth of their annual income."

What the Founding Fathers referred to as a capitation tax was clearly evident prior to the adoption of the Constitution. The States of Vermont, Massachusetts, Connecticut, Pennsylvania, Delaware, New Jersey, Virginia, and South Carolina, assessed their citizens upon their compensation from

their professions, trades, and employments, and collected a tax thereon for the benefit of the states and of the Federal government. This collection of historic evidence clearly proves that at all times, both before and after the adoption of the Constitution, a tax upon compensation from professions, trades, and employments was known as capitation taxes. Even after the term "income tax" replaced the term "faculty tax," our Founding Fathers recognized, designated and described these taxes as a "direct capitation tax."

In summary, a tax on a person, assessed according to his compensation or so-called income (whether estimated or actual) from his trade, profession, employment, etc., was a capitation tax according to the intent of the Founding Fathers. It doesn't matter what label is placed on a tax. Rather, it is ***the result of the taxation that determines its classification in the constitutional sense***. As noted above, the courts struck down the Harbor Maintenance Tax, because the **RESULT** of the tax was a tax on exports.

CONCLUSION

For each and all of the above grounds, a writ of certiorari should issue.

The decisions below should be reversed.

Respectfully submitted,

JAMES M. SCOTT

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APPENDIX A

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JAMES SCOTT, Defendant-Appellant.

No. 98-3830

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1999 U.S. App. LEXIS 16877; 99-2 U.S. Tax Cas. (CCH) P50,745; 84 A.F.T.R.2d (RIA) 5342

June 23, 1999 *, Submitted

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed.

July 19, 1999, Decided

NOTICE: RULES OF THE SEVENTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

SUBSEQUENT HISTORY: Rehearing Denied October 4, 1999, Reported at: *1999 U.S. App. LEXIS 24620.* Reported in Table Case Format at: *1999 U.S. App. LEXIS 31242.*

PRIOR HISTORY: Appeal from the United States District Court for the Northern District of Indiana, Hammond Division. No. 95 C 401. James T. Moody, Judge.

DISPOSITION: District court's judgment AFFIRMED; All pending motions denied.

CORE TERMS: summary judgment, delinquent taxes, contempt, injunction prohibiting, common-law, sanctioned, protestor, null and void, jury trial, personally, responded

COUNSEL: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Jon E. DeGuilio, OFFICE OF THE UNITED STATES ATTORNEY, Dyer, IN USA.

For UNITED STATES OF AMERICA, Plaintiff - Appellee: Charles E. Brookhart, DEPARTMENT OF JUSTICE, Washington, DC USA.

JAMES SCOTT, Defendant - Appellant, Pro se, Marion, IN USA.

JUDGES: Before Hon. DANIEL A. MANION, Circuit Judge, Hon. MICHAEL S. KANNE, Circuit Judge, Hon. DIANE P. WOOD, Circuit Judge.

OPINION: ORDER

The United States brought this action under *26 U.S.C. § 7402* against James Scott, seeking release of the "common-law lien" he filed against IRS agent Patricia Schreiner and an injunction prohibiting him from filing future such liens. The district court granted summary judgment for the government, holding that Scott failed to demonstrate that he was entitled to a lien. Scott appeals, arguing that the lien was valid and that the district court committed a host of procedural errors. We affirm.

In August 1995, Scott filed in Indiana a "Notice and Demand of Lien" in the amount of $1,000,000 against Patricia Schreiner, an IRS agent who had been involved in collecting delinquent taxes from him. Scott asserts that he filed the lien because Schreiner encumbered his property with a lien for unpaid taxes and thereby damaged his credit history. The government responded by filing this action several months later, seeking both a declaration that the lien was null and void and an injunction prohibiting Scott from filing future liens against Schreiner without leave of the court. Scott filed in February 1996 his own self-styled "complaint," which the district court construed as an answer because it responded to the government's complaint and objected to release of the lien against Schreiner. Scott subsequently filed a series of nonsensical motions such as a "Motion for This Court to be Held in Kokomo, Indiana," and "Motion for All Three Attorneys and Patricia D. Schreiner (Wright) to be Held in Contempt for not Filling out Public Servant Questionnaire," all of which the magistrate judge denied. The government then moved for summary judgment, contending that Schreiner was not personally indebted to Scott, and that Scott did not dispute having filed the lien in retaliation for Schreiner's efforts in her official capacity to collect delinquent taxes from him. Judge Moody agreed and entered judgment for the government declaring Scott's lien null and void and permanently enjoining Scott from filing liens against Schreiner without prior court approval.

Charitably construed, Scott's primary contention on appeal is that summary judgment was improper because his lien against Schreiner was valid. He also argues that: (1) he was deprived of the Seventh Amendment right to a jury trial and entitled to have his case handled by a district judge; (2) a

default judgment should have been entered against the government for failing to respond to his "complaint"; (3) he was denied the right to confront his accusers; and (4) the district court should have held the government's attorneys and Schreiner in contempt for refusing to answer the, "Public Servant Questionnaire" that he propounded.

Summary judgment was properly entered against Scott because he does not dispute that Schreiner never incurred a debt to him. Courts have uniformly invalidated so-called "common-law liens" filed by tax protestors to interfere with government employees' efforts to discharge their official duties. See *United States v. Ekblad, 732 F.2d 562, 563 (7th Cir. 1984); United States v. McKinley, 53 F.3d 1170, 1172 (10th Cir. 1995); Ryan v. Bilby, 764 F.2d 1325, 1327 (9th Cir. 1985).* Scott had a number of statutory options to challenge the assessment of delinquent taxes, including a suit for a refund of taxes paid, see *26 U.S.C. § 7422,* a damages action for failure to release a lien, see id. § 7432, and a suit seeking review of an assessment in the United States Tax Court, see id. § 6213. But he elected to forego these remedies and file a lien to which he was not entitled. On appeal he makes the same arguments advanced and rejected countless times in tax protestor litigation, such as that the Tax Code is not binding "positive law," and wages are exempt from taxation because they are not income. See, e.g., *United States v. Cooper, 170 F.3d 691 (7th Cir. 1999); United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991); Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); Lovell v. United States, 755 F.2d 517, 519 (7th Cir. 1984); Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986).* Needless to say, these contentions do not state a claim against the United States, let alone support a lien against its agents.

Scott's remaining contentions merit little discussion. The failure to hold a trial was not error because "the right to a jury trial exists only when there is some genuine issue of material fact to be determined." *Sullivan, 788 F.2d at 816;* see also *United States v. Stangland, 242 F.2d 843, 848 (7th Cir. 1957).* And Judge Moody had authority to refer non-dispositive pre-trial motions to a magistrate judge without Scott's consent. See *28 U.S.C. § 636*(b)(1)(A); *Rajaratnam v. Moyer, 47 F.3d 922, 923 (7th Cir. 1995).* Morever, the Sixth Amendment was not violated by Schreiner's failure to personally appear in the proceedings both because she is not a party to this action and, regardless of her status, this suit is civil, not criminal. In addition, the United States was not required to respond to Scott's "complaint," which resembles a responsive pleading and was appropriately so construed. Because the court never required the government's attorneys or Schreiner to complete the irrelevant and invasive "Public Servant Questionnaire," their refusal to do so does not constitute contempt.

Finally, although the government has not requested sanctions pursuant to Fed. R. App. P. 38, we cannot discern any reason why Scott should not be sanctioned under that provision for raising contentions that we have recently characterized as "frivolous squared." *Cooper, 170 F.3d at 691.* Accordingly, Scott is ordered to show cause within 10 days from the date of this decision why he should not be sanctioned $2,000 for filing a frivolous appeal. See *Cohn v. Commissioner of Internal Revenue, 101 F.3d 486, 486-87 (7th Cir. 1996)* (per curiam). All pending motions are denied.

AFFIRMED; RULE TO SHOW CAUSE ISSUED.

APPENDIX B

United States of America, Plaintiff-Appellee, v. James Scott, Defendant-Appellant.

No. 98-3830

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1999 U.S. App. LEXIS 24620

October 4, 1999, Decided

NOTICE: DECISION WITHOUT PUBLISHED OPINION

PRIOR HISTORY: Appeal from the United States District Court for the Northern District of Indiana, Hammond Division. No. 95 C 401. James T. Moody, Judge.

Original Opinion of July 19, 1999, Reported at: *1999 U.S. App. LEXIS 16877.*

JUDGES: Before Hon. Daniel A. Manion, Circuit Judge, Hon. Michael S. Kanne, Circuit Judge, Hon. Diane P. Wood, Circuit Judge.

OPINION: ORDER

Defendant-Appellant filed a petition for rehearing and petition for rehearing en banc on September 1, 1999. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition is therefore DENIED.

APPENDIX C

UNITED STATES OF AMERICA, Plaintiff v.
JAMES SCOTT, Defendant

CAUSE NO: 2:95 CV 401

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

September 21, 1998, Entered

JUDGES: James T. Moody, U.S. District Judge.

OPINIONBY: James T. Moody

ORDER

Defendant James Scott recorded with the Recorder of Deeds for Tippecanoe County, Indiana, notice of a "common law lien" against the property of Internal Revenue Service Agent Patricia D. Schreiner in the amount of $1,000,000.00. The United States filed this action against defendant Scott seeking a declaration that the lien is null and void, and a permanent injunction prohibiting Scott from filing any such liens against employees or agents of the Internal Revenue Service in the future.

The United States has moved for summary judgment. The facts established by the United States' motion, and by the averments of the United States' amended complaint which Scott failed to deny in his answer (designated by Scott as a complaint) show that Scott is a disgruntled taxpayer who, as do many others described in a number of published cases, believes that the Internal Revenue laws do not require him to pay taxes.

Scott has had no dealings with Agent Schreiner other than her attempts in her official capacity to collect taxes from him, and Schreiner has never incurred a personal indebtedness to Scott. Scott filed the lien at issue as a form of retaliation.

Scott essentially admits this in his response to the motion for summary judgment: "in August, 1995, I the Defendant, filed a common law lien against Patricia D. (Schreiner) Wright for the amount of one million dollars after she had damaged my credit account with the credit bureau." The remainder of Scott's response contains a cornucopia of information, irrelevant to the issue at bar, but which is commonly found in filings by tax protestors: e.g., "[a]ll payments must be paid in Silver and Gold;" "Citizens born in the sovereign 50 states were *not* born in a *territory* over which the *United States is sovereign*! Therefore, the citizens of the 50 states are not the subjects of the graduated direct income tax."

This court has jurisdiction over this action pursuant to 28 U.S.C. Section 1345 and the power to void "common law liens" pursuant to 26 U.S.C. Section 7402(a). See *Ryan v. Bilby*, 764 F.2d 1325, 1327 (9th Cir. 1985); *United States v. Poole*, 916 F.Supp. 861, 863 n. 4 (C.D.Ill. 1996) (collecting cases). As Scott's lien filing occurred in this District, venue is proper pursuant to 28 U.S.C. Section 1391(b). The undisputed facts show that the United States is entitled to the judgment it seeks, making entry of a summary judgment pursuant to Fed.R.Civ.P. 56 proper.

Accordingly, the United States' motion for summary judgment filed July 16, 1996 (13-1), is GRANTED. The motion for summary judgment filed by defendant Scott on November 29, 1996 (28-1) is DENIED.

The United States is invited to submit, within the next ten days, a proposed form of judgment decree to aid the court in entering an appropriate final judgment.

SO ORDERED.

ENTER: September 21, 1998.

James T. Moody
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES OF AMERICA, Plaintiff v.
JAMES SCOTT, Defendant

No. 2:95 CV 401

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
INDIANA, HAMMOND DIVISION

1998 U.S. Dist. LEXIS 17505

October 8, 1998, Decided

DISPOSITION: Plaintiff's motion for summary judgment granted and defendant's motion for summary judgment denied.

COUNSEL: For UNITED STATES OF AMERICA, plaintiff: Carol A Davilo, United States Attorneys Office, Dyer, IN.

For UNITED STATES OF AMERICA, plaintiff: Charles J Cannon, U S Department of Justice, Washington, DC.

JAMES SCOTT, defendant, Pro se, Marion, IN.

JUDGES: James Moody, JUDGE, UNITED STATES DISTRICT COURT.

OPINION BY: James Moody

OPINION: ORDER

Pursuant to the court's order of September 21, 1998, granting the United States' motion for summary judgment, and

denying defendant James Scott's motion for summary judgment, the clerk is hereby directed to ENTER FINAL JUDGMENT in favor of the United States as follows:

It is hereby ordered, adjudged, declared and decreed that the United States is entitled to the relief it seeks and judgment is entered in its favor against defendant James Scott as follows:

(1) that defendant James Scott, as of the date of this judgment, has no claim or lien of any kind against former United States Internal Revenue Officer Patricia D. Schreiner arising out of her efforts, undertaken as a United States Internal Revenue Officer, to collect internal revenue taxes from defendant James Scott;

(2) that any document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott, on or before the date of this judgment, purporting to set forth an extant money indebtedness due to defendant James Scott, from former United States Internal Revenue Officer Patricia D. Schreiner arising out of her efforts, undertaken as a United States Internal Revenue Officer, to collect internal revenue taxes from defendant James Scott, is (and are) null and void, and the recording of this judgment operates to expunge any such document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott;

(3) defendant James Scott, absent prior leave obtained from this court, is hereby PERMANENTLY ENJOINED from filing or recording any document, instrument, notice or other paper prepared or executed by, or on behalf of, defendant James Scott, purporting to set forth an extant money indebtedness due

to defendant James Scott, from former United States Internal Revenue Officer Patricia D. Schreiner arising out of her efforts, undertaken as a United States Internal Revenue Officer, to collect internal revenue taxes from defendant James Scott, and:

(4) from the date of this judgment forward, any document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott, in contravention of the injunction set forth in subparagraph (3) above, is (and are) null and void, and the recording of this judgment operates to expunge any such document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott.

SO ORDERED.

ENTER: October 8, 1998

James Moody

JUDGE, UNITED STATES DISTRICT COURT

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the United States is entitled to the relief it seeks and judgment is entered in its favor against defendant James Scott as follows:

(1) that defendant James Scott, as of the date of this

judgment, has no claim or lien of any kind against former United States Internal Revenue Officer Patricia D. Schreiner arising out of her efforts, undertaken as a United States Internal Revenue Officer, to collect internal revenue taxes from defendant James Scott;

(2) that any document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott, on or before the date of this judgment, purporting to set forth an extant money indebtedness due to defendant James Scott, from former United States Internal Revenue Officer Patricia D. Schreiner arising out of her efforts, undertaken as a United States Internal Revenue Officer, to collect internal revenue taxes from defendant James Scott, is (and are) null and void, and the recording of this judgment operates to expunge any such document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott;

(3) defendant James Scott, absent prior leave obtained from this court, is hereby PERMANENTLY ENJOINED from filing or recording any document, instrument, notice or other paper prepared or executed by, or on behalf of, defendant James Scott, purporting to set forth an extant money indebtedness due to defendant James Scott, from former United States Internal Revenue Officer Patricia D. Schreiner arising out of her efforts, undertaken as a United States Internal Revenue Officer, to collect internal revenue taxes from defendant James Scott, and:

(4) from the date of this judgment forward, any document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott, in contravention of the injunction set forth in subparagraph (3)

above, is (and are) null and void, and the recording of this judgment operates to expunge any such document, instrument, notice or other paper prepared, executed, filed or recorded by, or on behalf of, defendant James Scott.

This document entered pursuant to Rules 79(A) and 58 of the Federal Rules of Civil Procedure on:

Dated: October 22, 1998